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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/084,641	05/26/98	BREED D	ATI 183

PM11/0713

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EXAMINER	
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ART UNIT	**PAPER NUMBER**
3611	3

DATE MAILED: 07/13/98

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No. 09/084,641	Applicant(s) Breed et al.
	Examiner Peter English	Group Art Unit 3611

☐ Responsive to communication(s) filed on _____ .

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) *1-21* is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) *1-21* is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐approved ☐disapproved.

☒ The specification is objected to by the Examiner.

☒ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____ .

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____ .

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

DETAILED ACTION

Priority

1. The instant application is not a proper "continuation" of application 09/047,704 because the specification of the instant application contains new matter (i.e., matter not found in application 09/047,704). Specifically, the following constitute new matter: the discussion of the Blackburn et al. reference (page 6, lines 7-25 of the instant application); and the statement that the system "may also determine the orientation of the child seat, i.e., whether it is forward-facing or rear-facing" (page 9, lines 20-23 of the instant application).

2. In order to receive the benefit of an earlier filing date under 35 U.S.C. 120, applicant must either cancel the new matter from the specification or refer to the instant application as a continuation-in-part of application 09/047,704.

3. For the purposes of this Office action, the instant application is considered to be a continuation-in-part of application 09/047,704. Since application 09/047,704 is a continuation-in-part of 08/640,068, which is a continuation of application 08/239,978, applicant is entitled to the benefit of the filing date of 08/239,978 under 35 USC 120. Further, 08/239,978 is a continuation-in-part of prior application 08/040,978. Applicant is <u>not</u> entitled to the benefit of the filing date of 08/040,978 under 35 USC 120 because application 08/040,978 does not disclose the invention claimed in the instant application in the manner provided by the first paragraph of 35 USC 112. Therefore, references with an effective date prior to May 9, 1994 are considered to be prior art with respect to the invention claimed in the instant application.

Oath/Declaration

4. The declaration is defective because prior application 09/047,704 is not listed under the section for priority under 35 USC 120, so that the declaration lacks the "duty to disclose" statement required in CIP applications. Further, applications 08/905,876 and 08/505,036 are listed in the priority section, even though these applications are not being relied upon for priority under 35 USC 120.

The declaration is also defective because it fails to accurately identify the specification to which it is directed. Specifically, the title given in the declaration is incorrect. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

Specification

5. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

The following errors are noted:

at page 13, line 1, "A" should be "11A"; and

at page 13, line 7, "A" should be "12A".

Appropriate correction is required.

Claim Objections

6. Claims 16 and 18-20 are objected to because of the following informalities:

in claim 16, at line 2, "of" should be inserted after "step"; and

in claim 18, at line 2, "is" should be "are".

Appropriate correction is required.

Claim Rejections - 35 USC § 112

7. Claims 7-9, 16 and 18-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 7, at line 2, the term "said signals" lacks proper antecedent basis. The examiner suggests: in claim 6, at line 2, change "a respective signal" to "respective signals".

In claim 8, at lines 2-3, the term "the data corresponding to..." lacks proper antecedent basis. The examiner suggests: at line 2, delete "the".

In claim 16, at line 2, the term "said electronic signal" lacks proper antecedent basis. The examiner suggests: at line 2, delete "electronic".

In claim 18, at line 3, the term "said signals" lacks proper antecedent basis. The examiner suggests: at line 2, change "a respective signal" to "respective signals".

Double Patenting

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claims 1-21 are provisionally rejected under the judicially created doctrine of double patenting over claims 69-93 of copending Application No. 08/640,068. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: passenger compartment irradiating means, radiation receiving means, processing means, object categorization means, and output means for controlling a vehicle system.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

11. Claims 1-8 and 10-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Corrado et al. (US 5,482,314).

Corrado et al. discloses a motor vehicle occupant sensor system comprising: infrared and ultrasonic sensors 24, 26 comprising means for "illuminating" an object in a passenger compartment and for receiving reflected "illumination" from surfaces of the object (see column

12, line 28 through column 13, line 10, and column 14, lines 1-21); and a controller 30, 32 comprising means for processing the received "illumination" into an electronic signal characteristic of the object, means for identifying the class of the object by processing the signal into a categorization of the signal based on data stored within the controller, and means for outputting a control signal to a vehicle system (see column 7, lines 16-31, column 11, lines 34-52, column 15, line 17 through column 16, line 41, and column 19, line 45 through column 21, line 47). The objects include a rear-facing child seat 11 (Fig. 3).

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

13. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

14. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Corrado et al. (US 5,482,314) in view of the admitted prior art (p. 20).

Corrado et al. meets all the limitations of claim 7 as set forth above but lacks a controller including a trained neural network.

On page 20 of the specification, applicant admits that trained neural networks are well-known and commercially available.

Based on the admitted prior art (p. 20), it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Corrado et al. by providing a trained neural network because trained neural networks and their advantages are well-known to those of ordinary skill in the art.

Conclusion

15. Affidavits or declarations, such as those under 37 CFR 1.131 and 37 CFR 1.132, filed during prosecution of the parent application do not automatically become a part of this application. Where it is desired to rely on an earlier filed affidavit or declaration, the applicant should make the remarks of record in the later application and include a copy of the original affidavit or declaration filed in the parent application.

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Blackburn et al. teaches a child seat detection system.

Schousek and Kamei et al. are cited as being of interest, but they are not prior art.

17. The Group and/or Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 3611.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter English whose telephone number is (703) 308-1377. The examiner can normally be reached on Monday-Thursday from 7:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Johnson, can be reached on (703) 308-0885.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1113.

Any response to this action should be mailed to:

Assistant Commissioner for Patents
Washington, DC 20231

or faxed to:

(703) 305-7687 (for informal or draft communications, please clearly label "PROPOSED" or "DRAFT")

Hand delivered responses should be brought to the Group receptionist on the 2nd Floor of Crystal Park 2, 2121 Crystal Drive, Arlington, Virginia.

PETER C. ENGLISH
PRIMARY EXAMINER
7/8/98

pe
July 8, 1998